being violated, regardless of which law, or of what *particular* offense he thinks is being committed, and to act upon his belief or suspicion without "evidence of a fact committed", such as is required in other cases. The "reason to believe" would thus appear to be left solely to the judgment, suspicion, or whim of the officer. Can it be said that this does not impinge upon our constitutional inhibition of search and seizure?

It cannot be maintained that if this statute is void, then search and seizure without warrant, such as were permitted at common law, are also forbidden, because in the instances in which such action was allowed at common law it was necessary that there be evidence of and certainty as to the perpetration of the offense, either through its being committed in the presence of the officer (or private person in certain cases), or in case of felony, because of other reasonable grounds for belief, the officer being responsible for the sufficiency of the evidence upon which he acted. Such practice would not be enjoined by the policy of our Constitution. The basis of this rule of the common law was either the fact that all the evidence and identification required would exist where the offense was committed in the presence of the person making the arrest, or, where a felony was involved, the necessity for prompt action, provided there was reasonable ground for such action. Neither of these reasons is required to exist in the case of the procedure authorized by the statute under consideration. G. W. C.

CHANGES IN THE STATUTORY LAW OF CORPORATIONS MADE BY THE LAST LEGISLATURE.*—V. C. 1919, § 3781, amended by Acts of Assembly, 1922, p. 626.—The act as amended presents among others one radical change in the law concerning the decrease of actually issued and outstanding stock, viz.: *the moment at which the corporation has the right to effect such decrease.* The act in its former state declared the right complete when a certified copy of the proceedings relating to the decrease was recorded in the office of the secretary of the Commonwealth with the consent of the Corporation Commission, subject to the provisions of § 167 of the Constitution. Notice of such decrease was then required to be published in the appropriate newspaper within fifteen days therefrom. The statute in its present form makes the power of the corporation to execute the plan for the decrease *contingent upon the completion of the publication* at least once a week for three successive weeks, which publication must commence within *thirty* days after the filing of the certificate with the secretary of the Commonwealth. Not until after such publication can the decrease legally be effected.

Formerly a copy of the certified copy of the proceedings had to be so published. The amended act requires merely a *written state-*

*Continued from the November issue, p. 74.

ment over the signature of the president, vice-president, or secretary of the corporation, setting forth the plan of such reduction of the stock.

The former act required that a certified copy of the proceedings of the corporation, so far as relating to the proposed stock decrease be submitted to the Corporation Commission. The act in its present form calls for "a certificate, stating that the statutory requirements herein presented, have been fully complied with and setting forth the plan to be followed in accomplishing the proposed reduction". This shall be done with the same certificate and attestation as before.

The amendment also makes a new provision that the certificate shall be certified by the secretary of the Commonwealth "to the clerk of the circuit court of the county, or circuit, corporation, or chancery court of the city in which the original certificate of incorporation is recorded", which clerk must record the same in his book for the recordation of charters, endorse the fact of recordation upon the certificate and return the same to the clerk of the Corporation Commission for permanent filing.

The wording of the act in regard to the vote necessary for a decrease of the stock, is changed to read "stockholders holding at least two-thirds in amount of the issued and outstanding stock of the corporation *entitled to vote*". The former language was: "two-thirds in amount of all the stockholders".

In enumerating the methods by which such reduction may be effected there is added to the option of reducing the par value of shares, the words, "when authorized by an amendment", thus specifying the condition upon which such means may be employed.

The amended act specifically protects the rights of existing creditors by stating that "no such decrease shall affect the rights of any creditors of any such corporation existing at the time of such decrease". The former provision that any such decrease was made subject to the provisions of § 167 of the Constitution is omitted.

It is interesting to note that the expression "capital stock" wherever occurring in the former statute has been substituted by "actually issued and outstanding stock".

The same change in regard to where notice of a stockholders' meeting is to be mailed which runs throughout the amendments of 1922, occurs in this section, viz.: "to the last known post-office address as furnished by them to the officers of the corporation", in lieu of "post-office nearest his place of residence, as it appears upon the stock books of the corporation".

V. C. 1919, § 3822, amended by Acts of Assembly, 1922, p. 632. —The section as amended alters and gives in minute detail the procedure whereby a dissenting stockholder of a corporation which has merged or consolidated with another corporation may obtain the fair cash value of his stock upon proper notice of his dissent.

Notice of dissent must be made in writing served on the president, secretary, or treasurer of the merged corporation *or on the statutory agent of such corporation, if appointed* (new provision in

italics) at any time within three months after the date of the meeting of his corporation acting on the merger or consolidation agreement. If such notice of dissent is not given within the three months then the dissenting stockholder is precluded from his right to obtain the fair cash value of his stock, and he shall be deemed to have elected to participate in the merger agreement.

If within one month after the service of such notice there has been no agreement as to the fair cash value of the stock, either party may upon reasonable notice to the other, in the manner prescribed, apply to the proper court or judge in vacation where the principal office of the dissenting stockholder's corporation is located to have the fair cash value appraised by three disinterested parties, residents of this State, and the court or judge must appoint the appraisers on reasonable notice; provided, however, that if such notice is not served on such stockholder within the State and he does not appear before the date fixed in the notice, the application shall be continued as the court or judge may designate and an order of publication shall be published once a week for two weeks successively in a newspaper having general circulation where the proceeding is pending. On the date appointed in the notice or at such time to which continued, the appraisers shall be appointed, regardless of the appearance of the stockholder.

The appraisers must investigate the affairs of the corporation of the dissenting stockholder as of the day before the vote for the merger and report the fair cash value as of such date. They have the power to administer oaths and to take evidence within or without the State, but ten days' notice of the time and place of their first meeting must be given to both parties personally or by registered mail to their last known post-office address. No further notice of adjournments is necessary. The court or judge may order to be produced any records of either corporation deemed necessary. The finding of a majority of the appraisers shall be reported to the court or judge as the finding of the appraisers together with all evidence taken in the investigations.

Either party within thirty days after the filing of the report, may, upon reasonable notice (but no further publication is necessary), apply to have the finding of the appraisers set aside. If no such application be made within thirty days by either party, the court or judge shall confirm the report, which becomes immediately a judgment final and conclusive on all the parties to the proceeding. If upon petition to set aside the appraisers' report the court or judge is of the opinion that the valuation is just, the report and the amount thereof shall be confirmed after thirty days from the date it was filed, which confirmed report immediately becomes a final judgment of that court. Whether this judgment is final and conclusive on the parties may from the language be doubted.[1] If the court or

[1] It is to be noted that the express provision of the former act allowing writs of error in all cases, has been omitted in the amended act. There are three situations which may arise:

judge sets aside the report, it shall proceed at once to ascertain the fair cash value and shall enter against the merged corporation judgment therefor, which shall be final and conclusive upon the parties. (There is now no second set of appraisers to be appointed as formerly, if the first report is set aside.) Such judgments shall be collectible as are any other judgments at law.

The act further provides that when tender of the properly ascertained fair cash value is made, the dissenting stockholder shall deliver his stock certificate, if any, or, if none, make due assignment of his rights and the consolidated or merged corporation may dispose of the stock or such rights. If the stockholder refuses to receive payment thus tendered, and to deliver up the stock or mark the judgment satisfied, the merged corporation may deposit to the

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(1) No petition to set aside the report within thirty days; report confirmed.

(2) Petition to set aside denied; report confirmed.

(3) Petition to set aside allowed; court or judge ascertains value and enters judgment therefor.

A later sentence of the act declares that "*in any case* in which the report * * * is *confirmed* * * * the amount thereof shall *immediately* become and be a *final judgment of the court*".

In the first case above, the confirmed report is pronounced both final and conclusive on the parties and by the later sentence quoted above declared a final *judgment* of that court, which results in a final judgment, final and conclusive on the parties.

The language seems sufficiently clear in the third case, resulting in a judgment final and conclusive on the parties.

The second case presents difficulty. The statute declares that if the court or judge believes the report just he shall confirm it, but here ceases to consider the case presented by (2) but proceeds at once in the same sentence to the situation set out in (3) above, which is declared final and conclusive on the parties. The later sentence quoted renders the confirmed report in (2) a final judgment of that court, but unless the words "final and conclusive", as used in reference to (3), shall be construed to apply equally to (2), it may well be doubted whether the legislature has not unintentionally left excellent ground for contending that in this one case a writ of error may be maintained; for the language "final judgment of the court" is far different from "judgment final and conclusive on the parties" in considering the question of writ of error. It is submitted, however, that there can be no sound reason for such a distinction, and that such is contrary to the apparent general intent of the statute to deny writs of error in any case.

The purpose of the later language quoted, rendering confirmed reports judgments, seems to be to place all three cases on the same basis as judgments. It is submitted, however, that the words "immediately" and "final" as used can have no other effect than to render such confirmed reports final judgments at once without awaiting the fifteenth day or end of the term, which would not seem to be the case of the judgment rendered in (3), unless a judgment final and conclusive upon the parties can be construed to become final at once before the end of the term. There is no apparent reason for any such distinction to be made here and none is believed to have been intended.

It is submitted that the general purpose of the act upon a broad and charitable construction may be elucidated to allow no writ of error in any case, and to render the judgments in all cases final immediately upon the confirmation of the report or the entering of judgment by the court or judge.

credit of the court in which the proceeding is pending the amount of the judgment; and the court *shall* order the judgment marked satisfied by the clerk and the rights of the dissenting stockholder cease and determine, except to receive the sum so deposited upon surrender of the certificates of stock, if any. The merged corporation may dispose of such stock and may have an injunction against a disposal of them by the dissenting stockholder, or may compel by mandatory injunction their surrender appropriately endorsed.

The act also provides for such compensation for the appraisers as the court or judge may direct in the order appointing them and also for their reasonable expenses, both of which shall be paid by the merged or consolidated corporation.

In other respects the act remains as formerly.

A. R. B., JR.

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Sworn to and subscribed before me this 26th day of Sept., 1922.

HOWARD WINSTON, *Notary Public.*

My commission expires Sept. 16, 1925.